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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 261

RIN 0596-AD24

Prohibitions in Region 8, Southern Region

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Chattooga Wild and Scenic River is located in the Nantahala National Forest in North Carolina, the Sumter National Forest in South Carolina and the Chattahoochee National Forest in Georgia. Forest Service regulations generally prohibit floating activities on the Chattooga Wild and Scenic River unless authorized by a permit. On January 31, 2012, the U.S. Department of Agriculture (USDA), Forest Service issued decisions to change some of the locations where, and conditions under which, boating would be allowed. Consequently, the Forest Service proposes to amend the regulations to more accurately reflect the new management direction for the Chattooga Wild and Scenic River.

DATES: Comments on this proposed rule must be received in writing by **[INSERT**

DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL

REGISTER].

ADDRESSES: Send written comments to Proposed Rule Amendment, c/o USDA Forest Service, R8 Planning, 1720 Peachtree Street NW, Suite 811N, Atlanta, GA 30309.

Electronic comments may be sent to *comments-southern-regional-office@fs.fed.us*; or by facsimile to 404-347-5401. If comments are sent electronically, do not duplicate via regular mail. Comments should only address issues relevant to this proposed regulation.

All comments, including names and addresses when provided, will be placed in the rulemaking record and will be available for public inspection and copying. The public may inspect comments received on this proposed rule in the USDA, Forest Service Regional Office, 1720 Peachtree Street, Suite 811N, Atlanta, GA, on business days between the hours of 8:30 a.m. and 4:30 p.m. Those wishing to inspect comments should call ahead at 404-347-4984 to schedule a time and to facilitate entry into the office.

FOR FURTHER INFORMATION CONTACT: Paul Arndt, Regional Planner, Planning Unit, Southern Region, 404-347-4984. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800-877-8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background and Purpose for the Amendment

In 1974, Congress designated the 57-mile Chattooga River (and its 15,432-acre corridor) as a component of the National Wild and Scenic River System. The uppermost portion of the Chattooga Wild and Scenic River is located in the Nantahala National Forest (NF) in North Carolina. The river then flows in a southerly, south-westerly direction to form the boundary between Georgia and South Carolina, and also the

boundary between the Chattahoochee NF (in Georgia) and the Sumter NF (in South Carolina).

In the initial 1976 river management plan for the Chattooga River, the U.S. Forest Service used zoning to manage the upper and lower segments of the river for different recreational opportunities. As part of the initial zoning effort, management direction prohibited floating on the upper segment above GA/SC Highway 28 (which includes a section of the river in the Sumter NF in South Carolina, a section of the river in the Chattahoochee NF in Georgia, and all of the sections of the river in the Nantahala NF in North Carolina).

Under the authority of 36 CFR 261.70(a)(7), these prohibitions were codified at 36 CFR 261.77 (Federal Register, 43 FR 3706, January 27, 1978). In general terms, 36 CFR 261.77 prohibits floating activities on the Chattooga Wild and Scenic River unless authorized by a permit. Consistent with the river management plan that is incorporated into the forest plans, the original terms and conditions of the permits issued pursuant to 36 CFR 261.77 allowed floating on the Chattooga Wild and Scenic River but only on that portion of the river located downstream of GA/SC Highway 28. Therefore, due to the combination of 36 CFR 261.77 and the terms of the self-registration permit issued pursuant to that regulation, floating was allowed on that section of the river downstream of GA/SC Highway 28 and prohibited upstream from that location. However, that management direction has changed, allowing for an increase in boating opportunities upstream of GA/SC Highway 28. To be consistent with this new management direction, the agency proposes to amend 36 CFR 261.77.

On January 31, 2012, the Chattahoochee, Nantahala and Sumter National Forests issued Decision Notices that amended their Forest Plans to incorporate new management direction for the Chattooga Wild and Scenic River. These changes are based upon an Environmental Assessment titled “Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor”. Generally, these new decisions allow floating above GA/SC Highway 28 with certain restrictions.

In the existing regulations at 36 CFR 261.77, the sections of the river that lie within the Nantahala NF in North Carolina are not addressed. This area is instead regulated by Forest Supervisor’s closure order pursuant to subpart B of 36 CFR part 261. In the interest of efficiency and clarity, and to be consistent with the new management direction, the Forest Service proposes to amend 36 CFR 261.77 to include sections of the river that lie within the Nantahala NF. Consistent with the new management direction, the Forest Service also proposes to amend 36 CFR 261.77 to include the Sumter and Nantahala NFs in certain provisions that currently only include the Chattahoochee NF. In the interest of further consistency and clarity, and to better serve the public, the Forest Service also proposes to amend 36 CFR 261.77 by eliminating reference to specific locations where self-registration permits are made available to the public. Instead, the Agency will use other means to inform the public of the variety of places where it can go to obtain permits to float the Chattooga Wild and Scenic River. Lastly, in an effort to use more accurate and consistent terminology, the Forest Service proposes to replace the term “special use permit” with the term “special use authorization.”

Section-by-Section Analysis of the Proposed Rule

Part 261, Subpart C – Prohibitions in Regions

§ 261.77 Prohibitions in Region 8, Southern Region.

Revisions to § 261.77(a)

Currently, § 261.77(a) applies to the Sumter National Forest and the Chattahoochee National Forest abutting the Chattooga River. However, this regulation is silent about that section of the Chattooga Wild and Scenic River Corridor that is located upstream of the Sumter and Chattahoochee NFs which lies within the Nantahala NF in North Carolina. The January 31, 2012, decision by the Forest Service allows for additional boating to occur under permit in the upper section of the Chattooga River which in-part is located in North Carolina on the Nantahala NF. Therefore, the regulation needs to be revised to include the Nantahala NF. The Agency proposes that § 261.77(a) now be applicable to “any area of National Forest land abutting the Chattooga River.” A parenthetical sentence will then be added to clarify that “(The Chattooga River is located in the Nantahala National Forest in North Carolina, the Sumter National Forest in South Carolina and the Chattahoochee National Forest in Georgia.)”

Due to the allowance of additional floating on the Chattooga River, the Agency must be able to issue permits in a flexible and efficient manner that is consistent with the new management direction and in a manner that best serves the public. Rather than codifying the specific locations of self-registration permit stations in the regulations, these locations will be identified by the local Forest Service officials administering the different sections of the Chattooga River. Locations of the registration stations may need to be changed from time to time to better serve the public. In addition, the Forest Service

may, in the future, develop an option where permits could be obtained online or through other more efficient and effective means. To achieve this need, the specific locations of the “Forest Service Registration Stations” are being removed and the regulation will simply state that the use will need to be “authorized by permit or through a special use authorization”.

Revisions to § 261.77(b)

Similar to § 261.77(a), § 261.77(b) currently applies to “. . . the Sumter National Forest and the Chattahoochee National Forest abutting the Chattooga River.” However, this regulation is also silent about that section of the Chattooga Wild and Scenic River Corridor that lies within the Nantahala NF in North Carolina. Again, since the January 31, 2012, decision by the US Forest Service allows for additional boating to occur under permit in the upper section of the Chattooga River, the regulation needs to be revised to include the Nantahala NF. The agency proposes that § 261.77(b) now is applicable to “any area of National Forest System land abutting the Chattooga River.” As noted above, a parenthetical sentence will then be added to clarify that “(The Chattooga River is located in the Nantahala National Forest in North Carolina, the Sumter National Forest in South Carolina and the Chattahoochee National Forest in Georgia.)” Finally, the term “unless authorized by special use permit” is also being replaced with the term “unless permitted under a special use authorization”.

Revisions to § 261.77(c)

Section 261.77(c) currently only applies to “. . . the terms or conditions of any permit authorizing the occupancy and use . . .” However, in § 261.77(a) and (b), a distinction is now being made between a “permit” and a “special use authorization”. So

proposed § 261.77(c) is revised to apply to “...the terms or conditions of any special use authorization or permit authorizing the occupancy and use ...”

Revisions to § 261.77(d)

Section 261.77(d) applies to “. . . any portion or segment of the Chattooga River within the boundaries of the Chattahoochee National Forest . . .” However, as stated above, the Chattooga Wild and Scenic River flows through all three forests; the Chattahoochee NF, the Sumter NF and the Nantahala NF. In addition, the new management direction applies to all three forests. Therefore, this provision needs to be revised to include all three forests. So, proposed § 261.77(d) is revised to apply to “. . . any portion or segment of the Chattooga River within National Forest System land . . .”

In addition, as discussed above, in the interest of consistency, efficiency and clarity, to best serve the public, specific locations to obtain self-registration permits will no longer be codified. Rather, these locations will be identified by the local Forest Service officials administering the different sections of the Chattooga River. The locations of the registration stations may need to be changed from time to time to better serve the public. It should also be recognized that the Forest Service may, in the future, develop an option where permits could be obtained online or in some other efficient manner that better serves the public. In order to address this, the specific locations of the “Forest Service Registration Stations” are being removed and the proposed regulation will simply state that the use will need to be “authorized by permit or through a special use authorization.”

Revisions to § 261.77(e)

Similar to § 261.77(d), the scope of the commercial or business operation prohibitions currently in § 261.77(e) only applies to “. . . any portion or segment of the Chattooga River within the boundaries of the Chattahoochee National Forest . . .” As described above, the regulation needs to be revised to also include all three national forests. Therefore, § 261.77(e) is revised to read, “Entering, going, riding, or floating . . . upon any portion or segment of the Chattooga River within National Forest System land . . .” Finally, the term “unless authorized by special use permit” is also being replaced with the term “unless permitted under a special use authorization.”

Revisions to § 261.77(f)

Section 261.77(f) currently only applies to “. . . the terms or conditions of any permit authorizing the occupancy and use . . .” However, in § 261.77(d) and (e), a distinction is now being made between a “permit” and a “special use authorization”. So proposed § 261.77(f) is revised to apply to “. . . the terms or conditions of any special use authorization or permit authorizing the occupancy and use . . .”

Regulatory Certifications

Environmental Impact

This proposed rule is to amend an existing regulation to make it consistent with a USDA, Forest Service decision on the management of the Chattooga Wild and Scenic River, which lies within the Chattahoochee, Nantahala and Sumter National Forests. The Decision Notices (one for each National Forest) were signed on January 31, 2012, which were based upon an Environmental Assessment (EA) titled “Managing Recreation Uses in the Upper Segment of the Chattooga Wild and Scenic River Corridor.” The social and environmental effects of this decision are documented in this EA. This proposed rule

amendment is to update the Forest Service regulations to now be consistent with this new management decision.

Regulatory Impact

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on regulatory planning and review. It has been determined that this is not a significant proposed rule. This rulemaking will not have an annual effect of \$100 million or more on the economy, nor will it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This rulemaking will not interfere with an action taken or planned by another agency, nor will it raise new legal or policy issues. Finally, this proposed rule will not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of such programs. Accordingly, this rulemaking is not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

Regulatory Flexibility Act

This proposed rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 602 *et seq.*). The proposed rule makes minor, technical changes to the Forest Service's regulations. This rulemaking will not have a significant economic impact on a substantial number of small entities as defined by the act because the rulemaking will not impose recordkeeping requirements on them; it will not affect their competitive position in relation to large entities; and it will not affect their cash flow, liquidity, or ability to remain in the market.

No Takings Implications

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12630. It has been determined that the rulemaking will not pose the risk of a taking of private property.

Civil Justice Reform

This proposed rule has been reviewed under Executive Order 12988 on civil justice reform. After adoption of this proposed rule, (1) all State and local laws and regulations that conflict with this rulemaking or that impede its full implementation will be preempted; (2) no retroactive effect will be given to this rule; and (3) it will not require administrative proceedings before parties may file suit in court challenging its provisions.

Federalism and Consultation and Coordination with Indian Tribal Governments

The Department has considered this proposed rule under the requirements of Executive Order 13132 on federalism, and has determined that the rulemaking conforms with the federalism principles set out in this Executive Order; will not impose any compliance costs on the States; and will not have substantial direct effects on the States, the relationship between the Federal government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Department has determined that no further assessment of federalism implications is necessary.

Moreover, this proposed rule is not expected to have Tribal implications as defined by Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The Department does recognize that one or more Indian Tribes may have direct interest in the management of Chattooga Wild & Scenic River. Therefore, the

Department will request consultation with all potentially affected Indian Tribes on this proposed rule. The tribal consultation will be held concurrently with the public comment period.

Energy Effects

This proposed rule has been reviewed under Executive Order 13211 of May 18, 2001, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this proposed rule does not constitute a significant energy action as defined in the Executive Order.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538), which the President signed into law on March 22, 1995, the Department has assessed the effects of this proposed rule on State, local, and Tribal governments and the private sector. This rulemaking will not compel the expenditure of \$100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Controlling Paperwork Burdens on the Public

This proposed rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 261

Prohibitions, Law enforcement, National forests.

Therefore, for the reasons set out in the preamble, we propose to amend part 261 of title 36 of the Code of Federal Regulations as follows:

PART 261–PROHIBITIONS

1. The authority citation for part 261 continues to read as follows:

Authority: 7 U.S.C. 1011(f); 16 U.S.C. 4601-6d, 472, 551, 620(f), 1133(c)-(d)(1), 1246(i).

Subpart C–PROHIBITIONS IN REGIONS

2. Revise §261.77 to read as follows:

§261.77 Prohibitions in Region 8, Southern Region.

(a) Using or occupying any area of National Forest System land abutting the Chattooga River for the purpose of entering or going upon the River in, on, or upon any floatable object or craft of every kind or description, unless authorized by permit or through a special use authorization. (The Chattooga River is located in the Nantahala National Forest in North Carolina, the Sumter National Forest in South Carolina and the Chattahoochee National Forest in Georgia.)

(b) Using or occupying within the scope of any commercial operation or business any area of National Forest System land abutting the Chattooga River for the purpose of entering or going upon the River in, on, or upon any floatable object or craft of every kind or description, unless permitted under a special use authorization.

(c) Violating or failing to comply with any of the terms or conditions of any special use authorization or permit authorizing the occupancy and use specified in paragraph (a) or (b) of this section is prohibited.

(d) Entering, going, riding, or floating upon any portion or segment of the Chattooga River within National Forest System land in, on, or upon any floatable object or craft of every kind or description, unless authorized by a permit or through a special use authorization.

(e) Entering, going, riding, or floating within the scope of any commercial operation or business upon any portion or segment of the Chattooga River within National Forest System land in, on, or upon any floatable object or craft of every kind or description, unless permitted under a special use authorization.

(f) Violating or failing to comply with any of the terms or conditions of any special use authorization or permit authorizing the occupancy and use specified in paragraph (d) or (e) of this section is prohibited.

Dated: 12/21/15.

Thomas L. Tidwell,

Chief,

Forest Service.

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